



GEORGIA M. PESTANA
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

JEFFREY F. FRANK
Assistant Corporation Counsel
Email: jeffrank@law.nyc.gov
Cell: (929) 930-0780
Tel: (212) 356-3541

September 16, 2021

VIA ECF

Honorable Stewart D. Aaron
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Najhim Luke v. C.O. Khalid,
21-CV-05137 (RA) (SDA)

Your Honor:

The City's request is GRANTED IN PART and DENIED IN PART. The Court declines to stay this action. However, the Court hereby extends the deadline for Defendant to respond to the Complaint until Friday, November 19, 2021. No later than Monday, November 15, 2021, the City shall file a letter regarding the status of the DOC investigation. The Clerk of Court is respectfully requested to mail a copy of this Order to the *pro se* Plaintiff. SO ORDERED.

Dated: September 16, 2021

I am an Assistant Corporation Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York, an interested party in this matter. In that capacity, I write to respectfully request that the Court *sua sponte* (1) stay this matter until after a pending Department of Correction ("DOC") investigation is concluded; and (2) enlarge the time for defendant Correction Officer ("CO") Aamir Khalid to answer or otherwise respond to the complaint until thirty (30) days after the stay requested herein is lifted. This is the first request for an extension of this deadline. Because plaintiff is incarcerated and proceeding *pro se*, the undersigned was unable to obtain his consent to this request in an expeditious manner.

By way of background, on June 9, 2021, plaintiff *pro se* filed a complaint alleging, *inter alia*, that on May 31, 2021, defendant Officer Khalid "plucked" plaintiff in the eye as plaintiff was retrieving a bottle of water. (Docket Entry No. 2) On June 20, 2021, the Court issued an Order of Service requesting that defendant CO Khalid waive service of the summons and complaint. (Docket Entry No. 6) On July 20, 2021, the DOC filed a waiver of service on behalf of CO Khalid. (Docket Entry No. 8) Accordingly, the time for defendant CO Khalid to answer or otherwise respond to the complaint expires sixty (60) days after the waiver of service was filed: on September 20, 2021. See Fed. R. Civ. P. 4(d)(3).

This Office recently became aware of a pending DOC investigation that may be related to plaintiff's allegations against CO Khalid and which, consequently, may impact the representation determination that this Office must make pursuant to New York General Municipal Law § 50-k. As Your Honor is aware, pursuant to New York General Municipal Law § 50-k, this Office must investigate and determine whether it may assume legal representation of CO Khalid before we may seek relief or respond to the complaint on his behalf. See Mercurio v.

City of New York, 758 F.2d 862, 864–65 (2d Cir. 1985); Williams v. City of New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (holding that the decision as to whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

Accordingly, without appearing for or making any representations on behalf of defendant CO Khalid, this Office respectfully requests that the Court *sua sponte* (1) stay this matter until after the pending DOC investigation is concluded; and (2) enlarge the time for defendant Officer Khalid to answer or otherwise respond to the complaint until thirty (30) days after the stay is lifted. Upon learning from DOC that the investigation is concluded, the undersigned will promptly notify the Court.

Thank you for your consideration herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Frank', written over a horizontal line.

Jeffrey F. Frank
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **VIA FIRST CLASS MAIL**
Luke Najhim
Plaintiff *Pro Se*
NYSID: 12445423Z
B&C: 2412001108
North Infirmary Command
15-00 Hazen Street
East Elmhurst, NY 11370